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CONCORD, N.H.

Mr. Ralph G. Carpenter, 2nd, Director  
State of New Hampshire  
Fish and Game Department  
Concord, New Hampshire

Dear Ralph:

In reference to your letter of August 26, 1955 you state that one Harry Hubbard, now employed as Supervisor of Fish Propagation, is about to retire after thirty-five years of service. It is further indicated that the Fish and Game Commission desires to employ Mr. Hubbard as a consultant, based upon his superior knowledge, for two years on a per diem basis at approximately \$25.00 per day. With this in mind you ask if Mr. Hubbard's retirement benefits would be jeopardized.

My answer to your question is that if Mr. Hubbard becomes an employee of the state he is not eligible for retirement benefits except for a rule of the Retirement Commission which permits reemployment for not more than forty-four working days per year. On the other hand if Mr. Hubbard is hired as an independent contractor he would not be an employee of the state.

The ordinary test to determine whether one is an "employee" or an "independent contractor" is to ascertain who can control and direct the person in the performance of his work. Where the party for whom the work is done by another reserves no control over the means of doing it the relationship is that of independent contractor, but where such control is reserved the relationship is that of employer, employee. See 14 Words and Phrases, Employee, 569.

Under ordinary circumstances a contract for the personal services of an expert is the hiring of an independent contractor, and if, in fact, you reserve no control over the means of doing the work, no problem should arise.

Very truly yours,

Arthur E. Bean, Jr.  
Assistant Attorney General

AEB,Jr/T